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Decision of the Martha's Vineyard Commission

DRI 625 – Chasin Estate Plan

1. SUMMARY

- Referring Board: Edgartown Planning Board, Town of Edgartown, MA
- Subject: Development of Regional Impact #625
- Project: To create a Form A plan for estate planning purposes on Chappaquiddick which re-divides six parcels with 69.3 acres into 10 building lots, including one lot for affordable housing, plus one non-buildable parcel for Land Bank use.
- Owner: Richard and Laura Chasin
- Applicant: Richard and Laura Chasin; Glenn Provost of Vineyard Land Surveying (Agent)
- Applicant Address: C/O Vineyard Land Surveying, P.O. Box 487, West Tisbury, MA
- Project Location: Quammox and Jeremiah Roads, Chappaquiddick, Edgartown Map 34 Lot 39; Map 34 Lot 38; Map 47 Lots 81; 99; 101; and Lot 102 (69.3 acres total).
- Description: The proposal is a Form A plan which re-divides six parcels with 69.3 acres into 10 building lots and one non-buildable parcel. The applicant has agreed to prohibit further division of the lots. There are four existing buildings on the 69 acres. Two will have their own lots drawn around them (Lots 4 and 5). The main house and guest house will be on the same lot (7).
- Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on January 6, 2011.
- Written Decision: This written decision was approved by a vote of the Commission on January 6, 2011.

The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on May 21, 2010 by the Planning Board of the Town of Edgartown, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Section 2.2 (Division of Ten or More Lots) and 2.5 (Division of Thirty or More Acres). Both are mandatory referrals requiring review as a Development of Regional Impact and the project was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, October 8, 2010.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on October 21, 2010; which was continued to December 2, 2010 and closed on that date when Post Public Hearing LUPC was waived and the Commission went straight to Deliberations and Decision.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1 "Plan of Land in Edgartown, Mass. Surveyed for Richard & Laura Chasin" consisting of one 24" by 36" sheet showing the proposed Lot lines, development envelopes, driveways, existing meadow, and view easements. Prepared for Richard and Laura Chasin by Vineyard Land Surveying Inc., 12 Cournoyer Road, P.O. Box 421, West Tisbury, MA. Drawn March 26, 2010 and revised June 29, 2010. Scale: 1" = 100'.
- P2 "Common Scheme Restrictions" consisting of 2.5 pages of proposed land use restrictions signed by the Applicants lawyer, Rich Gallogly on December 2, 2010.

2.4 Other Exhibits

- E1. Referral to the MVC from the Edgartown Planning Board; received May 21, 2010.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, July 9, 2010; revised October 15, 2010; revised December 2, 2010.
- E3. Photographs of the site, taken on September 9, 2010 and November 17, 2010 by MVC staff member Paul Foley.
- E4. Letters from the Edgartown Planning Board (EPB).

- E5. Letter from Arthur Andersen, a lawyer representing Frank Gazarian and Karen Lento Gazarian.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, July 12, 2010.
- E7. Minutes of the Commission's Public Hearing, October 21, 2010.
- E8. Minutes of the Commission's Continued Public Hearing, December 2, 2010.
- E9. Minutes of the Commission Meeting of December 2, 2010 – Deliberations and Decision.
- E10. Minutes of the Commission Meeting of December 16, 2010 – Approval of the Written Decision.
- E11. Minutes of the Commission Meeting of January 6, 2011 – Approval of the slightly revised Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing.

- Presentation of the project by Glenn Provost (Surveyor) and Rich Gallogly (Lawyer).
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Traffic Study prepared by Charles Crevo of C3 Consulting.
- Oral testimony from Public on October 21, 2010: Karen Lento Gazarian and Frank Gazarian.
- Oral testimony from Public on December 2, 2010: Karen Lento Gazarian and Frank Gazarian; Mike McCourt and Fred Mascolo of the Edgartown Planning Board.

3. FINDINGS

3.1 Project Description

- The proposal is a Form A plan which re-divides six parcels with 69.3 acres into 11 lots.
- The applicant has agreed to prohibit further division of the lots.
- The proposal would allow one house and one guest house for each lot. Main houses are limited to a maximum of 6 bedrooms each. Guest houses have up to 2 BRs except none on Lots 3 & 6.
- Footprints of all structures would be limited to 6,000 s.f. on Lots 2, 7, 8, 9, and 10. Footprints of all structures would be limited to 5,000 s.f. on Lots 1, 4, 5, and 6. Lot 3 structures would be limited to 3,000 s.f. or less. Footprints do not include garages, porches, decks, or patios.
- The applicants have submitted suggested land preservation measures.
- There are four existing buildings on the 69 acres. Two will have their own lots drawn around them (Lots 4 and 5). The main house and guest house will be on the same lot (7).
- The agent had the Land Court "de-register" some of the lots. There have been a number of other plans proposed in the past for these lands.
- Lots 2, 6, 8, 9, and 10 may have 15 degree view channels as depicted in the Plan (P1) cited above "Plan of Land in Edgartown, Mass. Surveyed for Richard & Laura Chasin" with the appropriate local review, approvals, and permits required.
- The proposed lots are described as follows:

- Lot 1 is a new 7.58-acre lot bounded by Jeremiah, Litchfield, and Quammox roads
- Lot 2 is a new 9.29-acre lot between Jeremiah and Quammox roads.
- Lot 3 is a new 3.10-acre youth lot on Jeremiah Road.
- Lot 4 is a 5.93-acre lot drawn around an existing dwelling on Quammox Road.
- Lot 5 is a 3.21-acre lot drawn around an existing dwelling on Quammox Road.
- Lot 6 is a new 3.59 acre lot created between existing dwellings on Quammox.
- Lot 7 is a 10.53-acre lot drawn around the existing main house and guest house at the end of Quammox Road on the water (Katama Bay).
- Lot 8 is a new 10.42-acre lot between Jeremiah Road and Katama Bay.
- Lot 9 is a new 9.02-acre lot between Jeremiah Road and Katama Bay.
- Lot 10 is a new 6.46-acre lot between Jeremiah Road and Katama Bay.
- Parcel 11 is a new 0.17 acre non-buildable parcel at the bottom of Quammox Road to be used by the Martha's Vineyard Land Bank for water access.

3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to "protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies."

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that this is a well thought out plan that creates only ten lots whereas under zoning there could have been more than twenty lots.

A2 The Commission finds that the proposed development would have a minimal impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Wastewater and Groundwater, the Commission finds that despite the substantial nitrogen allocation available to the property the applicants have voluntarily committed to minimize the area of managed turf, not use harmful fertilizers, and employ drip irrigation.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the plan protects habitat and the shoreline and abides by the MVC Open Space Guidelines. The Commission notes that the applicants pro-actively approached the Massachusetts Historical Commission and employed the Public Archaeology Lab to test the proposed development envelopes and consulted with the Massachusetts Natural Heritage and Endangered Species Program to develop a design that protects the habitat of endangered species.

With respect to Night Lighting and Noise, the Commission finds that the applicants have offered to keep exterior lighting to a minimum.

With respect to Energy and Sustainability, the Commission notes that the project is for a subdivision, not for construction. It also notes that any houses are likely to be built well into the future at which time the required energy standards will likely far exceed the Commission's current policy.

A3 The Commission finds that the proposed development would have a moderate overall effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds that the proposal would have a minimal impact on vehicular trip generation.

With respect to Scenic Values, Character, and Identity, the Commission finds that the development envelopes have been carefully located and that there will be no stairs, floats, or piers into the water associated with this property.

With respect to the Impact on Abutters, the Commission finds that though there may be more units in the area the plan creates considerably less lots than could have been created by zoning.

A4 The Commission finds that the proposed development would have a positive impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission finds that the Applicants have voluntarily created a lot for affordable housing.

A5 The Commission finds that the proposed development would have minor impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

The Commission notes that the Applicants have sold abutting properties to the Land Bank with public access and that part of this plan includes a small parcel to the Land Bank for use by the public.

A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

A8 The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions such as those relating to wastewater and future traffic mitigation, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment in light of the considerations set forth in section 14(a) of the Act.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and as noted previously in section A8 of this decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The Commission finds that the project is subject to review by the Planning Board to determine the adequacy of the roads.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on December 2, 2010 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on December 2, 2010.

- Voting in favor: John Breckenridge; Christina Brown; Peter Cabana; Fred Hancock; Lenny Jason; Chris Murphy; Katherine Newman; Doug Sederholm; Linda Sibley; and Brian Smith.
- Voting against:
- Abstentions: None.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with the conditions listed in section 5 below.

This written Decision is consistent with the vote of the Commission December 2, 2010 and was approved by vote of the Commission on December 16, 2010.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

1 Common Scheme Restrictions

- 1.1 As offered by the Applicant, no use shall be made of any Lot which shall be in conflict with the Town of Edgartown Zoning By-laws, as the same may be amended from time to time, except as the same may be lawful as a nonconforming use or by the granting of special permits or variances.
- 1.2 As offered by the Applicant, no Lot shall be used except for residential uses.
- 1.3 As offered by the Applicant, no noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
- 1.4 As offered by the Applicant, no commercial vehicles having more than two axles or weighing more than 6,000 pounds and no vans or buses in excess of 6,000 pounds gross vehicle weight shall be stored or parked on any Lot. No unregistered or non-operative vehicles shall be parked on any Lot unless the vehicle is garaged.
- 1.5 As offered by the Applicant, no boat, camper, motor home, private trailer or other recreational vehicle exceeding 28 feet in lengths shall be kept on any Lot. Boats, campers, motor homes, private trailers or other recreational vehicles less than 28 feet in length shall be shielded from view.
- 1.6 As offered by the Applicant, no Lot shall be used or maintained as a temporary dumping ground for trash and garbage. Trash, garbage and other waste shall not be kept except in sanitary containers and in an enclosed location and not visible from the street or abutting properties.
- 1.7 As offered by the Applicant, no sign of any kind shall be displayed to the public view on any Lot except (i) one sign of not more than two square feet advertising property for sale or rent, and (ii) political signs in conformity with the applicable zoning by-laws.

- 1.8 As offered by the Applicant, no tower or antenna aerial shall be built or placed upon a home or any Lot. Satellite dishes in excess of 18" in diameter are prohibited.
- 1.9 As offered by the Applicant, during the period of building construction, the Lot Owner shall be responsible for keeping the property free from all debris or rubbish and for clearing such debris blown on or otherwise deposited on abutting properties or roadways.
- 1.10 As offered by the Applicant, there shall be no further subdivision of any Lot within the Subdivision after the date of this Decision that would create any additional buildable lot, notwithstanding that any such further subdivision of additional buildable lots is or may be in the future be permitted by law. Notwithstanding the foregoing, lot lines of the lots may be adjusted provided no additional buildable lots are created. Any Owner may convey a portion of such Owner's Lot to an adjoining Lot Owner, subject to applicable zoning requirements. In the event two or more lots are combined for use as a single lot, such lots shall be treated as one lot except for the annual assessment provided for herein, which shall continue for each original lot as if the lots had not been combined.
- 1.11 As offered by the Applicant, all Lots shall be part of the Association created by the Common Restrictions that will be recorded with the Subdivision Plan. Lot 3, which is designated an affordable lot in perpetuity under the Town of Edgartown affordable housing guidelines, shall not be subject to assessments by the Association, as long as Lot 3 continues to qualify as an affordable lot under the Edgartown affordable housing guidelines.
- 1.12 As offered by the Applicant, no building, other than a single, one-family dwelling, a guest house and appurtenant outbuildings, shall be erected, placed or maintained on any Lot. Appurtenant outbuildings may include a garage, shed, tool house, playhouse, boathouse and/or similar structure, and a swimming pool, tennis courts, and/or similar recreational facilities, except as otherwise herein provided.
- 1.13 As offered by the Applicant, all structures constructed on a Lot subsequent to the date of this Declaration must be built within that Lot's Building Envelope. Septic system leaching components, wells, driveways and utility trenches may be located outside of a Lot's Building Envelope.
- 1.14 As offered by the Applicant, no above-ground swimming pool, except temporary "kiddie" pools, shall be allowed. In-ground pools are prohibited on Lots 3 and 6. In-ground swimming pools may not exceed a surface area of 800 square feet.
- 1.15 As offered by the Applicant, tennis courts are prohibited on all Lots, except Lot 8.
- 1.16 As offered by the Applicant, guest houses on any Lot may contain a maximum of two bedrooms. No principal dwelling on a Lot may contain more than six bedrooms. Notwithstanding anything stated herein to the contrary, guest houses are prohibited on Lots 3 and 6.
- 1.17 As offered by the Applicant, with the exception of the existing beach access paths located on Lots 7 and 8, individual paths over the coastal bank to gain access to the beach shall be prohibited.
- 1.18 As offered by the Applicant, on Lots 2, 7, 8, 9 and 10, the footprint of all dwellings constructed subsequent to the date of this Declaration shall not exceed 6,000 square feet. On Lots 1, 4, 5 and 6, the footprint of all dwellings constructed subsequent to the date of this Declaration shall not exceed 5,000 square feet. On Lot 3, the footprint of any dwelling constructed subsequent to the date of this Declaration shall not exceed 3,000 square feet. The calculation of footprint shall be exclusive of garages, porches, decks and patios.

- 1.19 As offered by the Applicant, managed lawns on each lot shall not extend beyond the Building Envelope. The maximum square footage of a managed lawn on each Lot shall not exceed 5,000 square feet on Lots 1, 3, 4, 5, and 6, and 8,000 square feet on Lots 2, 7, 8, 9 and 10. Notwithstanding the foregoing, the managed lawn, field and open areas that exist as of the date of this Declaration on Lots 4, 5 and 7 may continue to be maintained.
- 1.20 As offered by the Applicant, piers and/or floating docks of any shape, size, type or configuration are prohibited.
- 1.21 As offered by the Applicant, only non-invasive plant species may be used for landscape planting.
- 1.22 As offered by the Applicant, no septic system leaching field may be located within 400 feet of the mean high water mark as shown on the Subdivision Plan and must be designed to include a "drip irrigation" component to reduce nitrogen.
- 1.23 As offered by the Applicant, asphalt paving is prohibited on all Lots.
- 1.24 As offered by the Applicant, all fertilizers used in the Subdivision shall be slow-release, water-insoluble, nitrogen types. No synthetic pesticides, including herbicides, fungicides and/or insecticides shall be used.
- 1.25 As offered by the Applicant, prior to commencing construction on any Lot, the Owner of such Lot must notify the Massachusetts Natural Heritage and Endangered Species Program and obtain any necessary permits and approvals.
- 1.26 As offered by the Applicant, the lot being donated to an affordable housing group (Lot 3) will be donated at the time of the first conveyance of a lot in this subdivision out of the family (children or grandchildren of Richard and Laura Chasin) or in any event no later than within four years of this Decision. The affordable housing group or its designee will be designated by the owner at the time of the conveyance with conditions that the lot shall be permanently affordable.
- 1.27 The access road to Lot 8 will be reviewed and approved to the satisfaction of the Edgartown Planning Board.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of Edgartown Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

6.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Edgartown Town Clerk.

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to record the Subdivision Plan and Covenants. Should the recording of the Subdivision Plan and Covenants not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

6.4 Signature Block

Chris Murphy
Chris Murphy, Chairman

1/27/11
Date

6.5 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 27th day of JANUARY, 2011, before me, PATRICIA L. DUNN, the undersigned Notary Public, personally appeared CHRIS MURPHY, proved to me through satisfactory evidence of identity, which was/were MA LIC # 59 06 948 83 to be the person(s) whose name(s) was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

Patricia L. Dunn
Signature of Notary Public

PATRICIA L. DUNN
Printed Name of Notary
My Commission Expires 6-18-2015

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 27, 2011

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